IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1406 OF 1996

The State of Maharashtra ..Appellants
versus
Bhagwan Shivram Kakalij ..Respondent

WITH
FIRST APPEAL NO. 1401 OF 1996

The State of Maharashtra ..Appellants
versus
Ganga Shiva Mhaske ..Respondent

WITH
FIRST APPEAL NO. 1402 OF 1996

The State of Maharashtra ..Appellants
versus
Gyandeo Shivram Patil ..Respondent

WITH
FIRST APPEAL NO. 1403 OF 1996

The State of Maharashtra ..Appellants
versus
Smt. P. T. Ushir & Ors. ..Respondents

WITH
FIRST APPEAL NO. 1404 OF 1996

The State of Maharashtra ..Appellants
versus
Murlidhar S. Chavan ..Respondent

WITH
FIRST APPEAL NO. 1405 OF 1996

The State of Maharashtra ..Appellants
versus
Indutai Dada Patil ..Respondent

WITH
FIRST APPEAL NO. 1407 OF 1996

The State of Maharashtra ..Appellants
versus
Roadmal G. Patil ..Respondent

WITH
FIRST APPEAL NO. 1408 OF 1996

The State of Maharashtra ..Appellants

versus
Yedu Kalu Ushir & Ors. ..Respondents

WITH
FIRST APPEAL NO. 1409 OF 1996

The State of Maharashtra ..Appellants
versus
Popat M. Ushir ..Respondent

WITH
FIRST APPEAL NO. 1410 OF 1996

The State of Maharashtra ..Appellants
versus
Manik P. Kuklij ..Respondent

WITH
FIRST APPEAL NO. 1411 OF 1996

The State of Maharashtra ..Appellants
versus
Pundlik S. Jalgunda ..Respondent

WITH
FIRST APPEAL NO. 1412 OF 1996

The State of Maharashtra ..Appellants
versus
Balwant F. Patil ..Respondent

WITH
FIRST APPEAL NO. 1413 OF 1996

The State of Maharashtra ..Appellants
versus
Ramchandra B. Kakalij ..Respondent

Mr. K. K. Tated for the Appellants - State.

Mr. P. B. Shah for the Respondents.

CORAM : D. G. DESHPANDE,J.

DATE : 25TH FEBRUARY,2005

ORAL ORDER :

1. All these 13 appeals are filed by the State of Maharashtra challenging the enhancement of

compensation awarded by the Joint District Judge, Nasik, vide Judgment dated 21.9.1995. This was a common order in LAR Nos. 229, 217 to 225, 227, 228 and 230 all of 1990.

2. All those claimants were from Wakhari, Taluka Nanagaon, District Nasik. Their lands were acquired by the State of Maharashtra for Nagyasaka Project. The Notification under Section 4(1) of the Land Acquisition Act came to be published in the Official Gazette on 23.11.1985. SLAO classified the land in three groups and awarded Rs.5,000/- per hectare for land coming in Group No.1, Rs.6,000/- per hectare for land coming in group No.2 and Rs.200/- per hectare for Potkharaba. Therefore, all the claimants filed their respective References for enhancement.

3. Joint District Judge, Nasik awarded Rs.18,000/- per hectare to the claimants, and hence all these 13 Appeals by the State because the District Judge, Nashik, has given a common Order or Judgment.

4. Learned AGP for the Appellants - State contended that even though the claimants had tried to rely upon two sale instances and had also tried to contend that some of their lands were bagayat,

both the contentions were negatived and rejected by the lower court. My attention was drawn to paragraph 6 of the judgment wherein evidence in that regard has been considered. Those two sales instances were in respect of small piece of land, viz. 20 R and 15 R. They were of the year 1979-80 and the price of land of 20R sold by Santu Patil C.W 2 average price came to Rs.25,000/- per hectare and average price of the 15R land sold by CW3 Nimba Chavan came to Rs.26,000/- per hectare.

5. The court while considering this evidence, took into consideration the fact that in respect of the land of Santu there was a well in his land and in respect of another transaction purchaser was a neighbour. Therefore if the adjoining owner purchases the land then naturally he was to pay more price because the land would have been to his advantage. The other ground that was given for rejecting those sale instances was that those sales were of small pieces of land and they were not proper to be considered with reference to the large area acquired in these acquisition proceedings. The court held that it was very difficult to accept the sale instances of 15R of land of 1979 with hectares of land in 1985.

6. For arriving at the price of Rs.18,000/- per

hectare, lower court i.e. Joint District Judge, (B. K. Bhoge) Nashik, has given following reasonings :

> **"There is no evidence that any of the land was Bagait. Claimants have examined C.W. 1 Balwant Patil, the only witness deposed in value words at Exh. 8 that some lands were Bagait. The argument of their learned advocate who pointed out some lands as Bagait is not acceptable. This way the market value of claimants land is to be fixed. I have stated that the claimants have demanded Rs.20,000/- per hectare. It is true that in proper cases some more amount can be awarded but there is no such case. The market value is to be fixed on the basis of sale instance Rs.25,000/- per hectare for irrigated land. The price of Bagait & Jirait come to Rs.25,000/- Rs.16,666/-. The sale instances are of very small portion there for increase in price due to difference in period in publication of notification u/s 4(1) of L.A. Act and date of sale instance need not be given. It is observed that Rs.18,000/- will be reasonable market price by giving some rise. With the general rate of Rs.18,000/- per hectare the market value, solatium and**

component will be calculated."

7. Mr. Tated contended that when the claimants relied upon two sale instances, as per which price per hectare was Rs.25,000/- and Rs.26,000/- respectively, the Reference Court itself came to the conclusion that, firstly, one of the sale was of the adjoining land with a right in the well and secondly both the sale instances were for a small piece of land, and, therefore, according to the Reference Court Rs.25,000/- per hectare was on higher scale. But even then inspite of these observations the court accepted and taken into consideration Rs.25,000/- per hectare for Bagayat land and then after deducting 1/3rd price taken into consideration price for Jirayat land at Rs.16666. Mr. Tated therefore contended that when the basis or the basis for fixing the price of the bagayat land is contrary to the facts on record and observations and subsequent conclusions about the price of Bagayat land at Rs.16,666/-, are absolutely wrong.

8. I questioned, Counsel for the claimants as to whether there was any basis for concluding that if the price of bagayat land was 'X' then price of the Jirayat land should be 1/3rd of 'X'. He took some time to give reply and thereafter relied upon judgment of this Court reported in **1997 V LJ 966 in**

First Appeal No. 613 of 1997 decided by Justice Sakhare. In that case also the claimant had proved the price of the irrigated land and the court accepted it as Rs.36,000/- per hectare as proper market value instead of Rs.30,000/- granted by the Reference Court and in paragraph 9 thereafter it was said: **"For unirrigated lands 1/3 is deducted from the figure arrived at for irrigated land".** Accepting this type of deduction and policy for fixing the price of unirrigated land, this court stated in t he aforesaid case that if the price of the irrigated land was Rs.36,000/- then for unirrigated land, it would be Rs.22,000/-. Therefore counsel for the claimants contended that the basis or the ratio for fixing price of the unirrigated land after deduction of 1/3rd price from the price of the irrigated land, was proper. This contention of the counsel for the claimants in the light of the aforesaid judgment is required to be accepted. Therefore, if the price of the bagayat land is taken as Rs.25,000/- per hectare then the price of Jirayat land comes to Rs.16,666/- after deducting 1/3rd therefrom. But counsel for the claimants contended that this sale instances were of 1979-80 and therefore the claimants were entitled for escalation of price at 10% per year and as such the compensation awarded by the Reference Court was inadequate and improper. However, there are no

cross appeals by the claimants nor cross objections to the appeals filed by the State and therefore there is no question of granting further compensation, though it is true that the Appeals filed by the State for reduction of compensation awarded by the Reference court, do not have any merit.

9. Mr. Tated further pointed out that the possession in this case was taken before the notification and therefore the claimants were not entitled to additional components under Section 23(1)(A) of the Land Acquisition Act. This fact was disputed by the Counsel for the claimants. According to him it has been observed in the judgment that possession was taken after notification, whereas Mr. Tated relied upon the application of the claimants with reference to application, which is forming part of the original record and proceedings, and, wherein claimants have stated that the notification was published on 23.3.1985. However, possession of the land was already taken by way of private negotiations much earlier in the year 1981.

10. Regarding this aspect the Reference Court observed:

"With the general rate of RS.18,000/- per hectare the market value, solatium and component will be calculated. From the date of possession or date of Notification u/s 4(1) of L.A. Act which ever is earlier. In this case there is no date of possession. The learned advocate for the claimants argued that the document is with the acquiring body. No document is filed by the State, therefore adverse inference should be drawn and the date of possession should be treated March 1981, which is given by C.W. 1 Balwant (Exh.8). This court has written letter to the acquiring body for furnishing date of possession which is 15.3.86. The date is communicated by the Executive Engineer Dhule Medium Project Din. No.2 vide letter No. 507 dtd. 14.9.95, which is brought to the notice of claimants counsel. The date of possession is 15.5.86. The date of Notification is 23.11.85".

11. It is clear that there is contrary stand taken by the claimants and the acquiring body about the date of possession. In the reference the claimants have specifically stated that possession was taken in 1981 by private negotiations whereas the date of notification under Section 4 is

23.11.1985 but this letter of Executive Engineer referred to and relied upon by the Reference Court shows that the date of possession is 15.5.1986.

12. However, in view of the specific finding of the Reference Court that date of possession is 15.5.1986 and which is based on the letter from the Executive Engineer dated 14.9.1995 it has to be held that possession was taken on 15.5.1986. The date of notification in this case is 23.11.1985. Therefore, interest awarded by the court from 15.5.1986 is correct, and calls for no interference.

13. In the result, I pass the following order:

ORDER

. All the Appeals are dismissed. No order as to costs.

25.2.2005 (D. G. DESHPANDE,J.)